

**Department of State Health Services
Agenda Item for State Health Services Council
January 30-31, 2008**

Agenda Item Title: Amend 25 TAC, §§37.331-37.336, and new §§37.337-37.339 concerning the reporting, treatment and investigation of child blood lead levels.

Agenda Number: 4e

Recommended Council Action:

☐ For Discussion Only

☒ For Discussion and Action by the Council

Background: The Environmental and Injury Epidemiology and Toxicology Branch manages the Childhood Lead Poisoning Prevention Program (CLPPP) both which are within the Prevention and Preparedness Division. The Division uses the principles of epidemiology, toxicology, and surveillance to identify populations at risk and develop evidence-based actions to protect and promote the health of the people of Texas. The CLPPP maintains a registry of blood lead results, analyzes the results, and conducts prevention activities. The activities are conducted through follow up by staff, through client contact by local health department contractors, by health care providers, and with assistance from the Texas Health Steps Program. The program is funded by a rider to the law, by CDC funding and EPA funding for a special project focusing on rural areas.

Summary:

The rules concern the reporting of all blood lead levels in children 14 years or younger. Proposed changes to the rules were made following a four-year rule review as required by §2001.039 of the Government Code.

The proposed rule changes:

- update legacy agency names and organizational structure;
- delete definitions no longer referenced in text;
- add text which states that confidential information provided to the department is in pursuant to the Health and Safety Code, Chapter 88;
- delete reporting of blood lead level results to the local health authority;
- update information required for the registry of children's blood lead test results;
- revise the preferred method of reporting to electronic transmission; and
- add criteria and procedures for follow up care and environmental lead investigations.

Summary of Input from Stakeholder Groups: The proposed rules were posted on the Childhood Lead Poisoning Prevention Program website for input during in March and October 2007. In addition, the Screening Advisory Committee, the CLPPP Network, and Strategic Planning Committee provided input at their meetings in March and October 2007. Stakeholders reviewed the document in meetings and provided feedback to the program via email. The input provided by the stakeholders overall was favorable. One of our stakeholders, Texas Health Steps, requested that we change a reference to case management since there are several definitions of case management in the department. We made this change and it was acceptable to Texas Health Steps.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item #4e.

Agenda Item Approved by Assistant Commissioner/Director: Casey Blass

Date: 12/21/07

Person Presenting: John F. Villanacci, Ph.D., NREMTI

Program: Environmental & Injury Epidemiology and Toxicology Branch

Phone No: 458-7269

Final CAM Approved by Consumer Affairs: RMM

Date: 12/19/07

Title 25. HEALTH SERVICES

Part 1. DEPARTMENT OF STATE HEALTH SERVICES

Chapter 37. MATERNAL AND INFANT HEALTH SERVICES

Subchapter Q. Reporting, Treatment and Investigation of Child Blood Lead Levels [Elevated Levels of Childhood Lead]

Amendments §37.331 - §37.336, New §37.337 - 37.339

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§37.331 - 37.336 and new §§37.337 - 37.339 concerning the reporting and control of child lead poisoning.

BACKGROUND AND PURPOSE

The rules as proposed are necessary to comply with the Texas Health and Safety Code, Chapter 88, which requires the department to adopt rules concerning the reporting and control of childhood lead poisoning.

Government Code §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §37.331 - §37.336 and has determined that reasons for adopting these sections are still valid and therefore these rules on childhood lead poisoning are still necessary. New §§37.337 - 37.339 were added because of amendments to the Texas Health and Safety Code, Chapter 88, by the 80th Texas Legislature, 2007.

SECTION-BY-SECTION SUMMARY

The amendments to §37.331 update legacy agency names and organizational structure to reflect the post-consolidation operations of the department and the Health and Human Services Commission. Amendments to §37.332 add new definitions and delete definitions no longer referenced in text. Amendments to §37.333 add text stating that confidential information provided to the department is in pursuant to the Texas Health and Safety Code Chapter 88, §88.002. Amendments to §37.334 update information required for the registry of children's blood lead test results. Section 37.335 was amended to state "any facility in which a laboratory conducts blood lead testing." Amendments to §37.336 update legacy agency names, delete reporting of blood lead level results to the local health authority and change the preferred method of reporting to electronic transmission. New §§37.337, §37.338, and §37.339 were added to define the criteria and procedures for follow up care and environmental lead investigations pursuant to the Texas Health and Safety Code, §88.007, §88.008 and §88.009.

FISCAL NOTE

Casey S. Blass, Director, Disease Prevention and Intervention Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal

implications to the state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Blass has determined that there will be no effect on small businesses or micro-businesses or persons who are required to comply with the sections as proposed because their business practices will not be altered. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Blass has also determined that for each year of the first five years the sections are in effect, the public will benefit from the sections as proposed in that they update agency names, reflect changes to organizational structure, and changes to operating procedures to eliminate possible confusion caused by outdated information in the rules.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined as a rule in which the specific intent is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKING IMPACT ASSESSMENT

The department has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Teresa Willis, Texas Childhood Lead Poisoning Prevention Program, Department of State Health Services, 1100 W 49th Street, Austin, Texas 78756, 512-458-7269, extension 6318 or by email to teresa.willis@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed rules are authorized by the Texas Health and Safety Code, §88.003, which requires rules on reporting childhood blood lead levels of concern; and §88.007 which allows rules on follow up care for children with elevated blood lead levels; and Government Code, §531.0055, and the Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The proposed rules affect the Texas Health and Safety Code, Chapters 88 and 1001; and Government Code, Chapters 531 and 2001.

Legend: (Proposed Amendment(s))

Single Underline = Proposed new language

[Bold, print and brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§37.331. Purpose.

The purpose of these sections is to implement the provisions of Texas [Acts 1995, 74th Legislature, Chapter 965, adding Chapter 88 to the] Health and Safety Code, Chapter 88 which provides the Executive Commissioner of the Health and Human Services Commission [Texas Board of Health] with the authority to adopt rules relating to the reporting of child blood [childhood] lead levels and control of elevated blood lead levels in children through an understanding of the prevalence and nature of the problem of childhood lead poisoning in Texas.

§37.332. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Certified lead risk assessor -- A person certified by the department to conduct lead risk assessments, inspections, and lead-hazard screens, as defined by Subchapter I. Texas Environmental Lead Reduction in Chapter 295 of this title concerning Occupational Health.

[(1) Blood lead level of concern--Presence of blood lead concentrations suspected to be associated with mental and physical disorders due to absorption, ingestion, or inhalation of lead as specified in the most recent criteria issued by the United States Department of Health and Human Services, United States Public Health Service, Centers for Disease Control and Prevention (CDC).]

(2) Child care--A school, preschool, kindergarten, nursery school, or other similar activity that provides care or instruction for young children.

(3) Child care facility--A public place or a residence in which a person furnishes child care.

(4) Child-occupied facility -- A building or part of a building, including a day-care center, preschool, or kindergarten classroom, that is visited regularly by the same child, six years of age or younger, at least two days in any calendar week if the visits are for at least:

(A) three hours each day; and

(B) 60 hours each year.

[(4) Commissioner--The Commissioner of the Texas Department of Health.]

(5) Coordination of care – Includes overseeing that needed care is provided, including medical follow-up as defined under the most recent criteria issued by the Centers for Disease Control and Prevention of the United States Public Health Service.

(6) [(5)] Department--The [Texas] Department of State Health Services.

(7) Environmental lead investigation -- An investigation performed by a certified lead risk assessor of the home environment of, or other premises frequented by, a child who has a confirmed elevated blood lead level warranting such an investigation, under the most recent criteria issued by the Centers for Disease Control and Prevention of the United States Public Health Service.

(8) Executive Commissioner - The Executive Commissioner of the Health and Human Services Commission.

(9) Follow-up care – Medical management includes follow-up blood lead testing at the suggested frequency under the most recent criteria issued by the Centers for Disease Control and Prevention of the United States Public Health Service.

(10) [(6)] Health authority--A physician appointed as such under Texas Health and Safety Code, Chapter 121.

(11) [(7)] Health professional--An individual whose:

(A) vocation or profession is directly or indirectly related to the maintenance of health in another individual; and

(B) duties require a specified amount of formal education and may require a special examination, certification or license, or membership in a regional or national association.

(12) Lead hazard -- An item, surface coating, or environmental media that contains or is contaminated with lead and, when ingested or inhaled, may cause exposures that contribute to elevated blood lead levels in children, including:

(A) an accessible painted surface or coating;

(B) an article for residential or consumer use;

(C) accessible soil and dust, including attic dust; and

(D) food, water, or remedies.

(13) [(8)] Lead--Metallic lead and materials containing metallic lead with a potential for release in sufficient concentrations to pose a threat to public health.

(14) [(9)] Lead poisoning--Presence of a confirmed venous blood level established by [board] rule in the range specified for medical evaluation and possible pharmacologic treatment in the most recent criteria issued by the [United States Department of Health and Human Services,] United States Public Health Service, Centers for Disease Control and Prevention (CDC). [The current level recommended by the CDC is a blood lead concentration of 20 micrograms of lead per deciliter of blood or greater.]

(15) [(10)] Local health department--A department created under the Texas Health and Safety Code, Chapter 121.

(16) [(11)] Physician--A person licensed to practice medicine by the Texas Medical Board [State Board of Medical Examiners].

[(12)]Public health district--A district created under the Texas Health and Safety Code, Chapter 121.]

(17) [(13)] Regional director--A physician appointed [by the board] as the chief administrative officer of a public health region under the Texas Health and Safety Code, Chapter 121.

§37.333. Confidentiality of Information Provided to the Department.

(a) Pursuant to the Texas Health and Safety Code, Chapter 88, §88.002, all data obtained is for the confidential use of the department and the persons or public or private entities that the department determines are necessary to carry out the intent of the Texas Health and Safety Code, Chapter 88, §88.002. Reports, records, and other information collected by, or maintained by, or provided to the [Texas] Department of State Health Services relating to children's reports of blood lead testing are not public information under open records law and may not be released or made public on subpoena or otherwise, except as described in subsection (b) of this section.

(b) (No change.)

(c) Limited release of the data is allowed by the Texas Health and Safety Code, §88.002.

(d) Any requests for confidential or statistical data shall be made in accordance with Texas Health and Safety Code, §88.002.

§37.334. Reportable Health Condition.

(a) All blood lead levels in children 14 years of age or younger shall be [are] reportable to the [Texas] Department of State Health Services (department). Elevated blood lead levels for individuals over 14 years of age shall be reported in accordance with Chapter 99 of this title (relating to Occupational Condition Reporting).

(b) (No change.)

(c) Reports shall include all information as required on the Texas Child Blood Lead Level Report Form Publication # F09-11709 which can be found at <http://www.dshs.state.tx.us/lead> or by calling 1-800-588-1248.

[(c) In order for a child to be included in the registry, the following information must be available:]

[(1) the child's name, age or date of birth, and gender; and]

[(2) the blood lead level and test date.]

§37.335. Persons Required to Report.

(a) The following persons are required to report all blood lead results:

(1) (No change.)

(2) the person in charge of:

(A) - (B) (No change.)

(C) any [a] facility in which a laboratory conducts blood lead testing.

(b) (No change.)

§37.336. Reporting Procedures.

(a) The reporting physician, laboratory director, or alternate person as set forth in §37.335(b) of this title (relating to Persons Required to Report) shall make the report of the child [childhood] blood lead level results [in writing] to [the local health authority or] the [Texas] Department of State Health Services (department) immediately after receiving the blood lead test result. The [A local health authority or the] department may authorize one or more employees [under his or her supervision] to receive the report from the physician, laboratory director, or alternate person by telephone or fax. The [local health authority or the] department shall implement a method for verifying the identity of the telephone caller when that person is unfamiliar to the employee.

(b) [The local health authority shall collect the reports and transmit the information at weekly intervals to the Texas Department of Health, Bureau of Epidemiology.]
Transmission also may be made by mail, courier, or electronic transfer.

(1) If by mail or courier, the reports shall be placed in a sealed envelope addressed to the attention of the [Texas] Department of State Health Services, Childhood Lead Poisoning Prevention Program [Bureau of Epidemiology,] and marked "confidential medical records."

(2) (No change.)

[(c) When a child with a blood lead result resides outside the local health jurisdiction that received the report, the local health authority shall notify the appropriate local health authority or public health region where the child or children reside. The department shall assist the local health authority in providing such notifications if requested. The receiving local health authority shall collect the reports and transmit the information at weekly intervals to the department.]

(c) [(d)] Blood lead levels of 40 micrograms per deciliter or greater shall be reported immediately by fax or telephone to **[the local health authority or]** the department at (800) 588-1248 or fax to (512) 458-7699. Reports shall include all information as required on the Texas Child Blood Lead Level Report Form Publication # F09-11709. The following information shall be reported:

- (1) the child's name, address, date of birth or age, sex, race and ethnicity;
- (2) the child's blood lead level concentration, test date, and name and telephone number of the testing laboratory;
- (3) whether the sample is capillary or venous blood; and
- (4) the name and city of the attending physician.

Legend: (Proposed New Rules)
Regular Print = Proposed new language

§37.337. Department Rules for Follow-Up Care; Coordination of Care.

(a) Health care providers should follow the department's Form Pb-109 Physician Reference on Follow-up Testing and Coordination of Care may be obtained from the department's website <http://www.dshs.state.tx.us/lead> or by calling 1-800-588-1248 which meets the federal requirements for the recommended schedule for:

- (1) obtaining a confirmatory diagnostic venous blood lead test sample; and
- (2) providing early and late follow-up care and other activities.

(b) Environmental lead investigation, shall comply with the department's eligibility criteria for environmental lead investigation as prescribed in §37.339(a) of this title (relating to Environmental Lead Investigations Procedures).

(c) The investigator shall provide guidance to parents, guardians, and consulting physicians from lead-risk assessment reports on how to eliminate or control lead exposures that may be contributing to the child's blood lead level.

§37.338. Environmental Lead Investigations.

(a) To be eligible for an environmental lead investigation, the child's elevated blood lead level(s) must meet the most recent criteria for environmental investigation issued by the Centers for Disease Control and Prevention of the United States Public Health Service.

(b) The request for an environmental lead investigation shall be on the department's most current form Pb-101, Request for Environmental Lead Investigation or equivalent. A current version of form Pb-101 may be obtained from the department's website at <http://www.dshs.state.tx.us/lead> or by calling 1-800-588-1248. The completed form should be sent by FAX, ATTENTION: Environmental Specialist, using the fax number on the form.

(c) On receiving a report of a child with a confirmed blood lead level warranting an environmental lead investigation, the department or its authorized agent may conduct an environmental lead investigation, using Form Pb-103 (Elevated Blood Lead Level Investigation Questionnaire) or its equivalent, of:

(1) the home environment in which the child resides, or other premises frequented by a child, if the department or the department's authorized agent obtains the written consent of an adult occupant;

(2) any child-care facility with which the child has regular contact and that may be contributing to the child's blood lead level, if the department or the department's authorized agent obtains the written consent of the owner, operator, or principal of the facility; and

(3) any child-occupied facility with which the child has regular contact and that may be contributing to the child's blood lead levels, if the department or the department's authorized agent obtains the written consent of:

(A) the owner, operator, or principal of the facility; or

(B) an adult occupant of the facility if the facility is subject to a lease agreement.

(d) Written consent shall be on the department's form or equivalent meeting the requirements of the Texas Health and Safety Code, §§161.011, 161.0211, and 161.0212.

(e) The lead risk assessor shall provide documented evidence when applicable, of all attempts made to receive consent for environmental lead investigation as required by subsection (c) of this section.

(f) If consent is denied, the investigator shall document the reason and circumstance for the denial, and measures that should be taken to protect the health of the child.

(g) Written consent is not required for an investigation for a child with a blood lead level of at least 45 micrograms per deciliter if a good faith attempt to contact the person authorized to provide written consent under subsection (e) of this section has been unsuccessful.

§37.339. Environmental Lead Investigations Procedures.

(a) Eligibility Criteria for Environmental Lead Investigation:

(1) The eligibility criteria for an environmental lead investigation shall be as stated on the department's Form Pb-101, Request for Environmental Lead Investigation or equivalent.

(2) A city, health district, or local health department may conduct an environmental lead investigation using lower elevated blood lead results than those in paragraph (1) of this subsection.

(3) Before conducting the investigation, city, health district, or local health department will:

(A) inform the health care provider of the intent to conduct the investigation; and

(B) submit to the department the most current Form Pb-101 Request for Environmental Lead Investigation or equivalent.

(b) Requesting an Environmental Lead Investigation

(1) The request for an environmental lead investigation shall be, completed in its entirety, on the department's most current form Pb-101, Request for Environmental Lead Investigation or equivalent.

(2) The following persons may request an environmental lead investigation for a child meeting criteria in subsection (a) of this section:

(A) the child's attending healthcare provider;

(B) a public health nurse;

(C) local health department staff;

(D) local Childhood Lead Poisoning Prevention Program staff; or

(E) designated Texas Childhood Lead Poisoning Prevention Program staff.

(3) An environmental lead investigation request may be denied by the department if the eligibility criteria is not met.

(4) The department will notify the requestor of the reason for such denial.

(c) Conducting and Reporting an Environmental Lead Investigation.

(1) Only a person currently certified by the State of Texas as a lead risk assessor shall conduct an environmental lead investigation.

(2) The lead risk assessor shall conduct the investigation in accordance with the conditions and requirements of the certification by the department.

(3) The lead risk assessor shall provide a written report of each completed environmental lead investigation to the provider; parent or guardian; and homeowner or property owner.

(A) The written report shall contain at least the following from the investigation:

(i) date lead risk assessment was performed;

(ii) address where lead risk assessment was performed;

(iii) name and address of property owner;

(iv) date structure or unit was built;

(v) name of lead risk assessor, certification number, or business affiliation of the person that conducted the investigation;

(vi) testing methods used (e.g. X-ray fluorescence (XRF), what samples were collected, and name of the accredited laboratory that analyzed samples);

(vii) a general statement of the results;

(viii) a description of recommended interim controls and/or abatement options for each identified lead-based paint hazard;

(ix) a suggested prioritization for taking each action based on the immediacy and severity of the hazard; and

(x) if the risk assessor is recommending use of an encapsulant or enclosure, the report shall include maintenance and monitoring schedule for the encapsulant or enclosure.

(B) If the parent or guardian is not the owner of the property investigated, and the risk-assessor discovered lead-based paint hazards on the property; the lead risk assessor shall inform the property owner about the investigation findings, recommendations, and their

legal obligation to disclose the same to all future tenants and buyers.

(4) The lead risk assessor conducting the investigation shall send a complete copy of the environmental lead investigation report to the department's Texas Childhood Lead Poisoning Prevention Program. The report shall consist of the following:

(A) a copy of the summary report letter sent to the healthcare provider, the parent, or guardian, and to the property owner, if applicable;

(B) a completed form Pb-103 (Elevated Blood Lead Level Investigation Questionnaire) or its equivalent;

(C) signed consent forms or records of consent denials; and

(D) results of all environmental sampling and testing performed.

(5) Confidentiality. The report shall be confidential as provided by the Texas Health and Safety Code, §161.0213.